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October 28, 2014

Via ECF

Chief Magistrate Judge Steven M. Gold  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: Core-Mark Midcontinent, Inc. v. Tri-State Candy Wholesale, Inc., *et. al.*  
*Eastern District of New York, Civil Action No. 1:14-cv-3694 (SJ)(SMG)*

Dear Honorable Sir:

We represent the Defendants, Tri-State Candy Wholesale, Inc. and Kirtikumar S. Ved, in the above-referenced matter. We write to request a telephone conference with the Court regarding the accounting that was provided to us by the Plaintiff and the Defendants' request for permission to file a motion for partial summary judgment on the issue of whether the UCC-1 Financing Statement should be terminated because Defendant Kirtikumar Ved's signature on the Security Agreement was forged.

During our initial conference with the Court on August 7, 2014, the Court ordered the Plaintiff to provide the Defendants with a full accounting by October 6, 2014 and that the Defendants must comment by November 1, 2014. The Plaintiff complied and sent us what purported to be a full accounting. After reviewing the accounting with the Defendants' accountant, their accountant determined that he will require additional information in order to prepare an accurate response.

By letter dated October 15, 2014 to Plaintiff's counsel, Peter A. Lauricella, Esq., we requested that the Plaintiff supplement its accounting. A copy of the letter is attached hereto. We advised Mr. Lauricella that when we met in our office in or around June, 2014, we reviewed a spreadsheet similar to that presented by the Plaintiff as part of its accounting. We advised him that in order to determine any true amount that may be outstanding, the Defendants need to know: (a) which invoices Core-Mark is claiming are unpaid and (2) which Tri-State payments were applied to which invoices. This information was not provided with the accounting that we received.

We requested that the Plaintiff provide us with documentation that reflects how each payment made by Tri-State Candy Wholesale, Inc. was applied and which invoices Core-Mark is claiming are open. Upon receipt of this information, the Defendants will then be able to prepare comments regarding the alleged outstanding amount.

On October 24, 2014, as we had not received a response to our October 15, 2014 letter, I sent a follow-up email to Mr. Lauricella requesting that he provide us with a response. To date, we have not received any response to our October 15, 2014 letter, or my October 24, 2014 email.

Towards this end, the Defendants do not yet have the information that they need to prepare their comments. The Defendants will therefore request not only that the Court order the Plaintiff to provide the information that we need to prepare our comments, but that the Defendants time to comment is extended to 30 days from the date on which we receive the supplemental information.

With respect to the Defendants' request for permission to file a motion for partial summary judgment, the Defendants retained Peter V. Tytell, a forensic document examiner, who is an expert in, among other things, the identification of handwriting and signatures. Mr. Tytell concluded that the signature on the Security Agreement is not that of Mr. Ved. Therefore, based upon Mr. Tytell's expert opinion, the Defendants will seek permission to move for partial summary judgment dismissing the Plaintiff's claim for Seizure/Replevin against Tri-State Candy based upon the UCC-1 that it filed and in favor of the Defendants on their claims to declare the UCC-1 Financing Statement ineffective, for Judgment directing Core-Mark to file a UCC-3 Termination Statement and for Fraud/Forgery.

We thank the Court for its time and consideration.

Very truly yours,

CONDON & ASSOCIATES, PLLC

By:   
Brian K. Condon

cc: Peter A. Lauricella, Esq.  
Kurti Kumar Ved